No. 84-861

IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
v.
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO; NEW YORK SHIPPING ASSOCIATION, INC., and COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS,
Respondents,
and
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR THE RESPONDENT TEAMSTERS UNION

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QUESTION PRESENTED

Whether the National Labor Relations Board correctly concluded that the collectively bargained rules governing the use of containers in the shipping industry, in their application to certain widespread practices of motor carriers and warehouses, lack a valid work preservation objective and therefore constitute unlawful secondary activity under §§ 8(b)(4)(B) and 8(e) of the Labor Management Relations Act, 29 U.S.C. §§ 158(b)(4)(B), (e).

PARTIES BELOW

The judgment of the court of appeals upon which review is sought was rendered in four consolidated cases. The International Brotherhood of Teamsters was a party in two cases below (Nos. 83-1185(L) and 83-1486). Other parties in the consolidated cases (Case Nos. 83-1185(L), 83-1214, 83-1424 and 83-1486) include: American Trucking Associations, Inc., and Tidewater Motor Truck Association; International Association of NVOCCS; American Warehousemen's Association; Houff Transfer, Inc.; National Labor Relations Board; International Longshoremen's Association, AFL-CIO; New York Shipping Association, Inc.; Council of North Atlantic Shipping Associations; Florida Custom Brokers and Forwarders Association, Inc.; Twin Express, Inc.; International Container Express, Inc.; San Juan Freight Forwarders, Inc.; Chester, Blackburn & Roder, Inc.; Eagle, Inc.; Eller & Company, Inc.; Harrington & Company, Inc.; Strachen Shipping Company and Marine Terminals, Inc.; Coordinated Caribbean Transport, Inc.; International Longshoremen's Association, Locals 333, 846, 862, 921, 953, 970, 1248, 1355, 1416, 1416-A, 1429, 1458, 1526, 1526-A, 1624, 1680, 1736, 1783, 1784, 1819, 1840, 1922 and 1970, AFL-CIO; International Longshoremen's Association, Atlantic Coast District Council, AFL-CIO; International Longshoremen's District Council, Baltimore, Maryland; International Longshoremen's Association, Hampton Roads District Council, AFL-CIO; Hampton Roads Shipping Association; and Southeast Florida Employers Port Association.

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OPINIONS BELOW

The amended opinion of the United States Court of Appeals for the Fourth Circuit is officially reported at 734 F.2d 966; it is set forth in full in the Joint Appendix accompanying the petitions for certiorari (Pet. App. 1a) and is unofficially reported at 116 L.R.R.M. 2311. The decision and order of the National Labor Relations Board (Pet. App. 35a) on which this review proceeding and enforcement action are based is officially reported at 266

N.L.R.B. 230, and is unofficially reported at 112 L.R.R.M. 1305.[1]

JURISDICTION

The judgment of the Fourth Circuit Court of Appeals was entered on May 9, 1984 (Pet. App. 1a). Timely petitions and suggestions for rehearing *en banc* were filed; they were later denied on July 31, 1984, with three judges voting to rehear the cases *en banc* (Pet. App. 31a). The NLRB's Petition for a Writ of Certiorari was granted on January 21, 1985 (Jt. App. 261). 53 U.S.L.W. 3523. Although the Teamsters Union petitioned for certiorari in No. 84-684, its petition has not been acted upon by the Court. Accordingly, it is before the Court as a respondent supporting the position of the petitioner under Sup. Ct. Rule 21(4). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent provisions of the Labor Management Relations Act of 1947 ("LMRA"), §§ 8(b)(4), 8(e), 29 U.S.C. §§ 158(b)(4), 158(e), are as follows:

Section 8(b), 29 U.S.C. § 158(b), provides in pertinent part:

> "It shall be an unfair labor practice for a labor organization or its agents—
>
> "4(ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where . . . an object thereof is:

[1] Citations to the Appendix filed with the certiorari petitions will be designated "Pet. App." "Jt. App." refers to the Appendix filed with this Court on March 1, 1985, while references to the appellate appendix below will be prefaced by "C.A. App." The employers and unions bound by the Rules on Containers will be referred to collectively as the "Shipping Group"; those challenging the Rules, including the Teamsters, will be designated the "Trucking Group." The union parties will be referred to as the "ILA" or the "Teamsters," as appropriate, and the petitioner will be variously called the "NLRB" or "Board."

> "(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person . . . *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful . . . any primary strike, or primary picketing; . . . ."

Section 8(e), 29 U.S.C. § 158(e), provides in pertinent part:

> "It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void. . . ."

STATEMENT OF THE CASE

A. Procedural History

The procedural history of this proceeding is complex.[2] Essentially, it encompasses nine NLRB cases challenging

[2] The cases involved in this proceeding, with their subsequent histories, are as follows: *Dolphin Forwarding, Inc.*, 236 N.L.R.B. 525 (1978), *enforcement denied and remanded*, 613 F.2d 890 (D.C. Cir. 1979), *aff'd*, 447 U.S. 490 (1980); *Associated Transport, Inc.*, 231 N.L.R.B. 351 (1977), *enforcement denied and remanded*, 613 F.2d 890 (D.C. Cir. 1979), *aff'd*, 447 U.S. 490 (1980); *Consolidated Express, Inc.*, 221 N.L.R.B. 956 (1975), *enforced*, 537 F.2d 706 (2d Cir. 1976), *cert. denied*, 429 U.S. 1041 (1977), *mandate recalled and remanded*, No. 75-4266, 2d Cir., Oct. 1, 1980; *Puerto Rico Marine Management, Inc.*, 245 N.L.R.B. 1320 (1979), *remanded*, No. ——, 5th Cir., (unreported); *Beck Arabia, Ltd.*, 245 N.L.R.B. 1325 (1979), *remanded*, No. 79-1672, 4th Cir., Dec. 24, 1980; *Terminal Corp.*, 250 N.L.R.B. 8 (1980) (reconsideration granted *sua sponte*); *Hill Creek Farms, Inc.*, Case Nos. 4-CC-1133, 4-CE-55

the legality of the Rules on Containers under the hot cargo and secondary boycott prohibitions of the LMRA. 29 U.S.C. § 158(b)(4), (e). The Rules are contained in collective bargaining agreements between the International Longshoremen's Association and various employer associations representing sea carriers and stevedoring concerns (Pet. App. 207a-39a). This proceeding was begun after the Court, in *NLRB* v. *Longshoremen's Ass'n*, 447 U.S. 490 (1980), faulted the Board's earlier work preservation analysis and remanded *Dolphin Forwarding* and *Associated Transport* for reconsideration. Other pending cases, including one that was newly filed by the Trucking Group, as well as one closed case that was reopened and remanded to the Board, were then consolidated with those remanded by this Court (Pet. App. 44a-45a).

After a hearing in the consolidated proceeding, the parties agreed upon a stipulated record (Pet. App. 77a-78a). Remaining evidentiary disputes were settled by orders entered by the Board or the Administrative Law Judge (Pet. App. 77a nn.5-9). On September 29, 1981, the ALJ issued his decision, supplemental decision and recommended order (Pet. App. 65a, 205a). The Board adopted the recommended order as its own on February 28, 1983 (Pet. App. 60a-61a). Enforcement was denied by the Fourth Circuit Court of Appeals on May 9, 1984 (Pet. App. 30a).

(then pending before NLRB); *Custom Brokers & Forwarders Ass'n. of Miami, Inc.*, Case No. 12-CE-30 (then pending before NLRB); *American Trucking Ass'ns, Inc.*, Case Nos. 22-CC-806 to -808 and 22-CE-44 to -46 (complaint issued Feb. 10, 1981). On January 19 and February 18, 20, 1981, the NLRB issued orders consolidating the foregoing cases for hearing on the issues raised by this Court's decision in *NLRB* v. *Longshoremen's Ass'n*, 447 U.S. 490.

B. Statement of Facts

The Rules on Containers have a lengthy history in waterfront labor relations.[3] They were developed in collective bargaining by the Shipping Group in response to the container innovation. From 1956, when the first container ship arrived at the Port of New York (Jt. App. 175), containerization has led to one dispute after another. This is because the enormous productivity gains attributable to containerization have lessened job opportunities for longshoremen (Pet. App. 46a; Jt. App. 154; C.A. App. 624), *Longshoremen's Ass'n I*, 447 U.S. at 495, and the ILA has sought both to preserve the traditional work of its members and acquire replacement work for them.

1. *Historic Longshore Work*

Before containerization, two types of ocean-borne cargo moved across the piers: breakbulk cargo and bulk cargo. The former type consisted of general or conventional cargo, such as loose merchandise, equipment, goods or commodities, that was moved piece-by-piece, while the latter was comprised of bulk products (e.g., grain, chemicals, phosphates, sugar, scrap and similar commodities) that remained virtually unaffected by the container innovation (C.A. App. 627). Much breakbulk cargo is still handled by deepsea ILA labor at the 34 Atlantic and Gulf Coast Ports involved in this proceeding (C.A. App. 627-28). But containerization has assumed an important role in general cargo handling, with adverse consequences for the traditional roles of affected employees.

Traditionally, longshoremen working at the piers performed all handling necessary for moving breakbulk cargo between the ship's hold and the tailgate of the truck

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[3] The Rules on Containers and their history have been described many times. See cases and authorities cited in note 1, *supra*. See also *Longshoremen's Ass'n I*, 447 U.S. at 494 nn. 2, 3 and authorities cited therein.

dispatched for pick-up or delivery (Pet. App. 4a-5a, 46a, 105a-106a). This work entailed the loading and unloading of ships by mechanical and manual means, and included the securing of ocean cargo on board vessels. Additional tasks were performed in moving cargo piece-by-piece through marine terminals. Thus, breakbulk cargo had to be checked, sorted, palletized and stored, as well as physically moved by longshoremen. Cargo repair, carpentry, dock equipment repair, and paperwork associated with the receipt and delivery of cargo were also tasks typically performed by ILA labor (*id.*; Jt. App. 151; C.A. App. 1167-73).

On the export side, breakbulk cargo was removed from the tailgate of the truck by ILA labor or Teamsters, depending on the practice at the port (Pet. App. 105a n.28). Longshoremen would then move the cargo by hand truck and later by mechanized hi-los to a place of rest in the terminal building. There, unless the task had already been performed beside the truck, ILA checkers would tally the cargo. It would also be marked and weighed. In preparation for loading, the cargo would be sorted according to type, port of destination or hatch, and placed on wooden pallets by other longshoremen. Thereafter, terminal employees would move the cargo to the end of the ship's tackle on the pier where it was received by loading gangs and lifted into the ship's hold. Longshoremen working in the hold would detach the cargo from the tackle, stow it according to a predetermined plan, and secure the cargo so it could not shift during the voyage (Jt. App. 161; C.A. App. 1167-73).[4]

Import cargo was handled in essentially the same manner, except the process was reversed. Upon arrival at the port, longshoremen would identify and remove cargo destined for that port from the ship's hold. Cargo remaining

[4] The work of other ILA crafts is summarized in the ALJ's decision (Pet. App. 106a).

aboard the ship would be shored or restowed as necessary for its protection. Using hand trucks and later hi-los, longshoremen would move the cargo to designated areas within the terminal. There, palletized cargo would be broken down, wooden boxes opened and unloaded, and the cargo would be sorted according to type, size, shape and consignee. Fragile and highly pilferable cargoes were placed in security areas. Before the cargo was released to the consignee, or a common carrier, it would be tallied by ILA checkers. Finally, the cargo would be moved to the dock by longshoremen for loading in trucks, either by ILA labor or Teamsters (Jt. App. 152; C.A. App. 1167-73).

2. *Containerization And The ILA's Response*

The term "containerization" refers to automated cargo handling made possible by the development of reusable, metal containers specially designed for ocean and limited surface transportation, in which cargo is unitized, and the associated technology for the handling and transportation of containers (Pet. App. 45a, 93a-95a). *Longshoremen's Ass'n I*, 447 U.S. at 494. Even before the advent of the modern container,[5] cargo unitization was not a new idea. During World War II, the military services shipped special cargoes in reusable boxes of small dimension (8′ square) (Jt. App. 152-53). After the war, sea carriers engaged in the Puerto Rico trade acquired and used small containers, called "Dravo" and "Conex" boxes, of the same size (8′ square) or slightly larger (Pet. App. 96a; Jt. App. 235-36; C.A. App. 599-600). By the mid-1950's, larger containers ranging from twelve to twenty

[5] The modern container is a metal, reusable receptacle for cargo that may be 20, 35 or 40 feet in length. The largest containers hold up to 30,000 pounds of cargo. Containers are designed to fit the chassis of some trucks, as well as in the holds of specially designed container ships. *Longshoremen's Ass'n I*, 447 U.S. at 494. Mechanized equipment for handling containers, such as cranes, derricks, stuffing and stripping sheds, straddle carriers and heavy-duty forklifts, was gradually introduced at various ports as containerization spread (Pet. App. 96a n.22; C.A. App. 636).

feet in length had appeared at the Port of New York (Pet. App. 96a; C.A. App. 1173). Their use rapidly spread to other ports. Until 1957, however, containers were carried on the decks of conventional breakbulk ships (Pet. App. 96a).

Arrival of the first automated container ship at the Port of New York in 1957 heralded eighteen years of labor strife on the piers. Containerization introduced enormous efficiencies in moving ocean-borne cargo by eliminating much of the handling involved in traditional breakbulk operations. Productivity gains, however, were accompanied by pier-side job losses and dislocations for both ILA labor and Teamsters (Pet. App. 6a-7a; C.A. App. 1559-60). Longshoremen were in a position to resist these job losses; the Teamsters were not.

The Shipping Group's 1959 bargaining negotiations opened in New York. Initially, the ILA demanded that all containers be stripped and stuffed [6] at the piers by longshoremen, and the shipping employers insisted that containers move over the piers without restriction (Pet. App. 7a). An agreement was reached. In return for conceding the right of the employers "to use any and all type[s] of containers without restriction or stripping by the union" (Pet. App. 206a), the ILA obtained two important concessions: first, royalties would be paid to the ILA's benefit funds on containers handled away from the piers, and, second, stripping and stuffing performed in the Port of Greater New York, whether at the piers or terminals, or whether through direct contracting out, would be performed by deepsea ILA labor (Pet. App. 8a, 206a).

Unfortunately, the parties understood their agreement differently. The ILA maintained that it had agreed only

[6] "Stripping" refers to the act of unloading or discharging cargo from a container, while "stuffing" means the act of loading cargo into a container (Pet. App. 84a).

to permit FSL [7] containers to move over the piers without restriction, while retaining for its members the right to stuff and strip LCL [8] containers (Pet. App. 8a). The shipping employers, in contrast, contended that they had won the right to use containers freely (Pet. App. 98a). In 1962, due to continued labor unrest, the employers agreed that:

> "Where an employer-member of NYSA supplies a container which is the property of such member, to a consolidator for loading or discharging of cargo in the Port of Greater New York, it will be stipulated that such container must be loaded or unloaded by ILA at longshore rates." [Pet. App. 97-98a.]

Over the next two contract periods,[9] the tonnage of containerized cargo reached 20 percent of all cargo handled at New York. In 1967, containerization spread to the important North Atlantic trade route between New York and Europe (Pet. App. 98a). It also had become increasingly important in other Atlantic and Gulf Coast Ports by 1968 (Pet. App. 100a-01a n.26). Negotiations for the 1969 contract opened with the parties reverting to earlier positions. The ILA insisted on stuffing and stripping all containers at the piers, while NYSA countered with a demand for eliminating all restrictions on the movement of containers (Pet. App. 9a, 99a). Failing

[7] "FSL" refers to a "container which consists of cargo of a single shipper or consignee" (Pet. App. 84a).

[8] "LCL" refers to "a container which consists of cargo of more than one shipper or consignee" (Pet. App. 84a), *i.e.*, a "consolidated container load" (Pet. App. 223a). This designation is often used in conjunction with "LTL," a term referring to "a surface trailer which includes less than a load to capacity *or* cargo of more than one shipper or consignee" (Pet. App. 84a).

[9] During the 1964 negotiations, NYSA and the ILA agreed to establish a guaranteed income plan ("GAI") for the benefit of longshoremen, the first in the industry, but the container provisions were not changed (Pet. App. 98a; Jt. App. 160).

agreement, the ILA struck the Port of New York for fifty-seven days. At other ports, the strike lasted over 100 days. It was ended following membership ratification of an agreement reached by the parties with the aid of mediation (Pet. App. 99a; Jt. App. 161-64).

The Rules on Containers were included in the 1969 Agreement (Pet. App. 9a-10a, 207a-11a), and largely reflected earlier agreements on container use (Pet. App. 100a). Accordingly, the 1969 version of the Rules related solely to containers "which contain LTL loads or consolidated full container [LCL] loads" and met the additional criteria of Rule 1 (Pet. App. 208a).[10] Containers within all of the criteria of Rule 1 were to be stuffed and stripped by ILA labor (Rule 2, Pet. App. 208a).

Spurred by ILA claims of Rules' evasion and related labor strife, the Shipping Group parties met in New York on November 20, 1972 and in Dublin, Ireland on January 29, 1973. From these meetings emanated the so-called "Dublin Supplement" (Pet. App. 102a-03a, 214a). That Supplement interpreted the Rules and strengthened their enforcement (Pet. App. 10a-11a). More significantly, it expanded the Rules' application to all containers, *including FSL containers*, stuffed or stripped within fifty miles of port areas by persons other than employees of the cargo's beneficial owner (Pet. App. 215a, 224a). Also, shipping employers were forbidden to supply their "containers to any facilities operated in violation of the Rules . . ." (Pet. App. 218a).

As interpreted and expanded by the Dublin Supplement, the Rules on Containers have been included in the Shipping Group's collective bargaining agreements since 1974 with some variation (Pet. App. 47a, 222a-39a). In

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[10] To come within the Rules, containers also had to come or go to any person (including a consolidator or distributor who stuffs or strips containers), other than the beneficial owner of the cargo, at points within a 50-mile radius of the pier (Pet. App. 208a).

1975, after the ILA unilaterally suspended the Rules, the shipping parties settled the immediate dispute by executing a restated version of the Container Rules that impacted heavily on warehousing practices.[11] Previously, FSL cargo could be stripped by non-ILA labor at bona fide public warehouses in port areas if normal storage fees for thirty days were paid and title remained with the beneficial owner of the cargo for that period (Pet. App. 226a). At the ILA's insistence, the warehouse exception was eliminated altogether for export cargo and narrowed for import cargo by requiring its actual storage for thirty days (Pet. App. 10a-11a, 232a). In addition, a clarification of the Rules was adopted that reinforced their application since 1973 to FSL containers handled by truckers (Pet. App. 233a).

Under the Rules on Containers in their present form, stuffing and stripping performed on any container owned or leased by a shipping employer must be done at the pier by deepsea ILA labor if such container comes from or goes to any person, other than the cargo's beneficial owner, at a point within a fifty-mile radius of the pier. Consolidated container loads coming from or bound for points outside the fifty-mile area need not be stripped or stuffed by longshoremen unless they are rehandled within the geographic area. FSL containers containing the cargo of qualified shippers or manufacturers, if loaded at their facilities by their own employees and transported intact, are excepted from the Rules' requirements. Also excepted are inbound FSL containers warehoused for at least thirty days within the geographic area, even if their contents are handled by non-ILA labor (Pet. App. 217a-18a, 223a, 225a-26a, 232a-33a).

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[11] The 1975 restatement of the Rules narrowed the exception for "containers loaded with the cargo of a single manufacturer (manufacturer's label)" by adding the requirement that such containers had to be loaded at the manufacturer's facilities with its own employees in order to qualify for the exception (Pet. App. 232a).

The Rules have elaborate enforcement provisions (Pet. App. 230a-31a, 233a-34a), and prescribe severe penalties for their violation. As noted, shipping employers must refuse to furnish containers to shippers, consignees, and their agents, including freight consolidators, motor carriers and warehousemen, who operate in violation of the Rules (Pet. App. 218a). Liquidated damages of $1,000 per container, payable to the Container Royalty Fund, are levied against shipping employers who carry containers that are not stuffed or stripped by ILA labor in accordance with the Rules (Pet. App. 228a-29a). Typically, the liable shipping employer will attempt to obtain reimbursement of the fine from the offending motor carrier or warehouseman by threatening to withhold containers (Jt. App. 28, 31, 45-46, 104). Still another method of enforcement is the ILA's refusal to handle containers stuffed or stripped in violation of the Rules (Jt. App. 22, 136).

3. *Traditional Surface Transportation Practices*

a. *Motor Carriers*

Containerization diminished the work available for employees of certain surface transportation firms. Drivers and helpers employed by motor carriers, for example, were deprived of much work involved in loading and unloading trailers at marine terminals. Similarly, dock workers employed at trucking stations lost loading and unloading work to the extent cargo is transported intact in FSL containers (Pet. App. 133a; Jt. App. 11; C.A. App. 1557-60). These tasks disappeared in the container revolution. Employment at trucking stations did not increase as a result of containerization (Pet. App. 133a).

Other tasks traditionally performed by motor carrier employees in connection with export and import cargo were virtually unaffected by containerization.[12] Yet this

[12] This portion of the Statement of Facts relies heavily on the ALJ's comprehensive findings of fact (Pet. App. 132a-45a), whose accuracy is not challenged by the Shipping Group. See Shipping Group's Principal Brief, at 4-5, in *American Trucking Ass'ns, Inc.* v. *NLRB*, 734 F.2d 966 (4th Cir. 1984).

remaining work, never performed by ILA labor, is profoundly affected by the Rules on Containers. Before and after containerization, motor carriers maintained trucking terminals in port cities. Depending on the nature of their operating authority, they engaged in interstate long-haul and/or local cartage operations. Then, as now, they picked up import cargo from, and delivered export cargo to, marine terminals (Pet. App. 132a). Their operations did not change after containerization, except that cargo was hauled to and from the piers in containers instead of trailers, according to the wishes of shippers. In short, the container was substituted for the trailer (Pet. App. 135a n.51).

Prior to containerization, import cargo destined to two or more consignees was frequently picked up and loaded into a single trailer at the marine terminal. That breakbulk cargo would not be delivered directly to consignees or their agents. Instead, it would be hauled to a trucking terminal to be unloaded and reloaded into other equipment for delivery without additional cost to the shipper or consignee (Jt. App. 26-27, 65, 85-86; C.A. App. 1552-56). This practice was followed in long-haul and most local cartage operations. In long-haul operations, import cargo from a single shipper destined to a single, *non-local* consignee was also unloaded and reloaded at trucking stations for reasons of convenience, economy and safety.[13] If, however, the entire load of breakbulk cargo was destined locally to a single consignee (and presumably to multiple consignees on the same delivery route), delivery would be made directly from the marine terminal (Pet. App. 133a).

[13] "For example, the freight might be reloaded for proper weight distribution, to comply with differing 'bridge formulas' in various states, or to provide for the proper unloading sequence in the destination area..." (Jt. App. 26).

After containerization, many motor carriers possessing interstate authority saw fit to transport FSL cargo to and from points outside local port areas exclusively or predominantly (Jt. App. 89, 110, 117, 127). Import FSL containers are picked up at marine terminals in accordance with the shipper's instructions and hauled to trucking terminals located within port areas. "Exclusive use containers," for an extra fee, are delivered intact to consignees (Jt. App. 75). Only rarely does the overland bill of lading specify exclusive use (Jt. App. 204-05). Normally, it enables the motor carrier to decide whether to deliver the container intact, or to unload the container and reload its cargo into a trailer for delivery (Jt. App. 60, 74, 222-23). The latter practice is known as "short-stopping." It is not a service offered to the shipping public. Shippers or consignees do not benefit from short-stopping and are not charged for it (Jt. App. 26, 101).

Shortstopping is mandated by the economics of surface transportation (Pet. App. 134a). Cargo is transferred off-pier between containers and over-the-road equipment by motor carrier employees to consolidate freight destined to the same geographic area into trailers having a greater capacity than the largest container; to comply with state weight limitations or to redistribute container loads that are too heavy, unbalanced, or otherwise unsafe for over-the-road transportation; to avoid deadhead runs with empty containers; to minimize per diem charges on containers as well as container maintenance costs; and to assure equipment compatibility, an important consideration because the "fifth wheel" on many tractors is not designed to accommodate container hook-ups and the tractor can be damaged if used to haul a container more than twenty-five miles (Jt. App. 9-10, 26-28, 69, 92, 97-98, 117-18, 129-31, 206-10, 212-13, 217, 222, 225-26, 229-30).

Essentially the same considerations indicate why motor carriers choose to stuff some FSL export containers at

their terminals located in port cities (Jt. App. 118). Obviously, it is scarcely more efficient to haul an empty container over-the-road to a shipper's or manufacturer's facility to be stuffed with FSL export cargo than it is to back-haul an empty container after import cargo has been stripped from it. And, tractors can be damaged by hauling incompatible containers in either direction. The economics of particular transactions control whether or not export cargo will be trucked in conventional road equipment from the shipper's facility to the motor carrier's pier-city terminal and there stuffed into FSL containers (Pet. App. 136a). Rather than delivering ten twenty-foot containers to the customer's facility and transporting them to the pier, for example, a motor carrier will haul the cargo to its terminal in trailers, stuff the ten containers, and take them to the pier (Jt. App. 7).

b. *Public Warehouses*

Inland public warehouses have long provided storage facilities and intermediate distribution services for the surface transportation of general freight (Pet. App. 137a). Warehouses have always performed cargo unloading, sorting and consolidation work (Jt. App. 97). Containerization did not change the nature of warehouse work, except insofar as cargo is now unloaded from and loaded into containers as well as trailers. Once unloaded, cargo is still sorted, labeled, palletized and stored until the owner instructs its distribution (Pet. App. 138a; Jt. App. 67-68, 96-98, 134-35). Not all work performed at inland warehouses is relevant here.[14] Of con-

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[14] Import containers containing cargo that is actually stored for 30 days or more can be stripped consistent with the Rules (Pet. App. 232a). Container handling by inland warehouses, acting as stripping stations, or as competitors of marine terminal warehouses for short-term storage, was held within the Rules' lawful reach (Pet. App. 141a-42a). Similarly, the Rules' restriction on the handling of export containers by warehousemen was said to be lawfully applied to situations where "public warehouses, on behalf of shippers, have received trailer loads of cargo from a single

cern are those specialized services historically performed only by warehousemen which are interdicted by the Rules on Containers (Pet. App. 56a, 145a).

The primary function of inland warehouses is to store cargo for indefinite periods, and then to distribute it according to the owner's instructions. Consignees of import cargo use the services of warehouses to inventory and store cargo "as against flexible and unforeseeable market demand" (Pet. App. 141a), thus enabling its immediate distribution, in whole or in part, to designated customers or retail outlets (Pet. App. 55a-56a, 141a; Jt. App. 68, 96-97). Additionally, warehouses are uniquely equipped to handle certain kinds of import cargo (Jt. App. 251-56; C.A. App. 500). Both types of services are illustrated by Terminal Corporation's work for a German manufacturer of delicate firebrick requiring special handling. FSL containers loaded with brick in Germany were consigned to Terminal at the Port of Baltimore.

> "On import, Terminal would strip the container and pursuant to instructions from the exporter, would hold a portion as inventory against future orders, while distributing quantities of brick already sold. Sometimes, the brick would remain in the warehouse for less, and sometimes longer, than 30 days. The warehouse, in addition to its utility in inventorying against future orders, also made available bricks of various sizes allowing customers to make last minute determinations as to the size needed to meet their requirements." [Pet. App. 179a.]

Warehousemen also handle export cargo on behalf of single shippers which, after containerization, they have often stuffed into FSL containers. Container stuffing is an integral element of the warehouse's specialized services in handling and packing sensitive or unusual cargo (Pet. App. 126a n.46; Jt. App. 106-07). In other situations, container handling is required by the nature of the warehouse's storage and distribution services. Thus, warehouses receive and hold cargo for later consolidation and shipment with additional cargo sent by the same shipper (Jt. App. 43-44, 98). They might also receive for storage goods, equipment or materials from manufacturers or vendors, which the shipper has purchased, pending instructions from the shipper to consolidate and ship particular items overseas (Pet. App. 144a n.58, 181a-82a).

These traditional inland warehousing practices, involving special handling, storage and distribution services, often pursuant to a continuing relationship with a consignee or exporter, are not duplicated at the piers (Pet. App. 144a-45a, 180a). Like the incidental container handling performed by motor carriers (see pp. 13-15, *supra*), these warehouse services have evolved in a separate tradition of surface transportation. The work of warehouse employees in providing them was not created by containerization, and does not threaten the traditional work of longshoremen (Pet. App. 180a, 182a).

c. *Impact Of The Rules*

The foregoing motor carrier and warehouse practices involving containerized freight have been, or will be, seriously disrupted by implementation of the Rules on Containers. Enforcement actions in the form of fines, refusals to supply or handle containers, and cancellation of interchange agreements,[15] have been taken against

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shipper and on behalf of the shipper stuffed that cargo into containers without performing any other specialized warehousing service" (Pet. App. 143a). The Rules are also enforceable against public warehouses that consolidate LCL freight on their own behalf or on behalf of an NVOCC or other consolidator (Pet. App. 145a n.59).

[15] Equipment interchange agreements are entered into between steamship lines and motor carriers before containers are released. They govern the rights and obligations of the parties, such as per diem charges and equipment maintenance costs, while containers are in the motor carrier's possession (Jt. App. 28; C.A. App. 1225).

motor carriers and warehousemen engaged in traditional off-shore functions (Pet. App. 176a, 179a, 181a-82a, Jt. App. 22, 28, 45-46, 104-06, 136). Compliance with the Rules will result in the loss of work by motor carrier and warehouse employees, whether or not their work is actually captured by longshoremen.

One motor carrier testified that, if unable to shortstop FSL import containers, it would be forced to cease hauling containerized cargo through its port terminal (Jt. App. 131). Another indicated that, without the option to shortstop, it would cease handling twenty-foot containers altogether, even though such action would probably result in its losing the ability to carry forty-foot containers covered by the same bills of lading. To the extent possible, however, forty-foot containers would be hauled intact through the geographic fifty-mile zone (Pet. App. 298a). Necessarily, the trucker's work force would be reduced (Pet. App. 299a). Other motor carriers agreed that their inability to strip containers for convenience would cause customer and revenue losses (Jt. App. 22-23, 93).

The impact of the Rules on specialty warehousemen is equally drastic. Their enforcement in the early 1970's caused one warehouseman's customers to cease using it as their port area agent and distribution center. Its "customers simply had other trucking companies haul the containers to other facilities beyond the fifty-mile limit" (Pet. App. 295a). To avoid extra fees for container stripping and stuffing at the piers, as another warehouseman learned, even customers of long standing will divert their business to warehouses outside the fifty-mile limit (Pet. App. 301a-02a).

C. The NLRB's Decision And Order

The Administrative Law Judge concluded that the Rules had an illegal work acquisition objective as applied to container stuffing and stripping performed by motor

carriers for their own convenience and at their own expense, rather than as a service offered to the shipping public. He found "that the practice of short-stopping [import containers] is rooted in traditional motor carrier transport cargo handling procedure" (Pet. App. 134a). It "neither competes with marine cargo handling nor amounts to a subterfuge to oust longshoremen of their traditional work . . ." (Pet. App. 135a). Similarly, the stuffing of outbound FSL containers by motor carriers for convenience was found incidental to the movement of surface freight and "within the framework of traditional motor carrier practice . . ." (Pet. App. 136a).

As applied to traditional warehousing practices, the ALJ further concluded, the Rules violated §§ 8(b)(4)(B) and 8(e) of the Act. 29 U.S.C. § 158(b)(4), (e). Container stripping and stuffing integral to services unique to the surface warehousing industry are beyond the Rules' lawful reach, for this work has not been created by containerization and is unrelated to traditional services available at the piers (Pet. App. 144a-45a). The Rules were upheld in their application to *freight consolidators*, including truckers and warehousemen acting as such, as "a rational effort to return to the piers, work diverted by inducements and . . . technology . . ." (Pet. App. 129a).

The Board adopted the findings and conclusions of the ALJ with only two changes. First, it explicitly defined the work in controversy as "the initial loading and unloading of cargo within 50 miles of a port into and out of containers owned or leased by shipping lines having a collective-bargaining relationship with the ILA" (Pet. App. 57a-58a, 59a). Using this definition, the Board agreed that the Rules had an overall work preservation objective, and were lawfully applied to recapture traditional longshore work that had been diverted from the piers by containerization (Pet. App. 58a-59a). Second, while agreeing that the Rules had an illegal work acquisi-

tion objective as applied to shortstopping and certain warehousing operations (*id.*), the Board modified the ALJ's rationale in finding these violations.

The ALJ concluded that the Rules' application had an illegal objective because they "seek to compensate longshoremen for [job] losses at the expense of inland employees whose jobs did not derive from containerization . . ." (Pet. App. 123a). Though not rejecting these findings, the Board thought it unnecessary to rely on them. Instead, it concluded that the Rules' application to shortstopping and specialized warehouse services violated § 8(e) of the Act because "the duplicative work of the longshoremen, in handling cargo which is then rehandled by truckers and warehouses, no longer exists as a step in the cargo-handling process" due to the efficiency of the new container technology (Pet. App. 59a). So far as the Rules were applied to acquire work to replace that which had disappeared due to technological change, they were tainted with an illegal work acquisition objective. Accordingly, the Board adopted the ALJ's recommended orders in three cases, *Associated Transport*, *Beck Arabia* and *Terminal Corporation*, involving motor carriers and specialty warehousemen (Pet. App. 60a-61a, 193a, 198a, 200a).

D. Decision Of The Court Of Appeals

On cross petitions for review and enforcement, the Fourth Circuit Court of Appeals upheld the legality of the Rules on Containers in their entirety (Pet. App. 29a). It denied the Trucking Group's petition for review and the Board's petition for enforcement of its orders prohibiting the Rules' application to shortstopping and certain warehousing practices. The Shipping Group's petition for review was granted (Pet. App. 30a). Agreeing with the Board, the court of appeals held that the Rules represented a lawful exercise of the work preservation doctrine because they sought to preserve work traditionally performed by bargaining unit employees, and were

addressed to the shipping employers who actually possessed the power to assign the work in question (Pet. App. 26a).

On the other hand, the lower court held that the Board erred as a matter of law by deciding that the Rules' application to shortstopping and specialized warehousing violated the Act's proscriptions against secondary activity. In the appellate court's view, the Board failed to support its conclusion that the Rules were unlawfully applied to acquire the work of trucking and warehouse employees by a finding that such off-pier work actually had been transferred to the piers to be performed by longshoremen. It thought that mere duplicative cargo handling at the piers would not affect employees of truckers and warehousemen, who would continue to do what they did prior to containerization (Pet. App. 27a-28a).

SUMMARY OF ARGUMENT

The ultimate legal issues in this case are whether the Rules on Containers, as applied to certain motor carrier and specialty warehouse practices, violate § 8(e)'s hot cargo prohibition, and whether the ILA's enforcement of the Rules by coercive means violated § 8(b)(4)(B) of the Act. Resolution of these issues requires an inquiry into all the "surrounding circumstances" to determine if the Rules' purpose is to preserve or recapture traditional bargaining unit work, or if, instead, they are tactically calculated to satisfy ILA objectives elsewhere. *National Woodwork Mfrs. Ass'n* v. *NLRB*, 386 U.S. 612 (1967); *Meat and Highway Drivers, Local 710* v. *NLRB*, 335 F.2d 709 (D.C. Cir. 1964). An agreement or boycott whose purpose is "'to reach out to monopolize jobs or acquire new job tasks'" (*i.e.*, work the union never had) by forcing a cessation of business is secondary and unlawful. *NLRB* v. *Enterprise Ass'n of Pipefitters*, 429 U.S. 507, 528-30 n.16 (1977).

Using the analytical framework provided in *Longshoremen's Ass'n I*, 447 U.S. 490, the Board found that

container work integral to certain motor carrier practices (*i.e.*, the stripping of shortstopped import containers and stuffing of FSL export containers) and specialized warehousing services was not historically or functionally related to traditional longshore work. Nor did the work performed by inland employees in connection with these surface transportation functions displace or threaten longshoremen's work. Instead, the duplicative work of the longshoremen, in handling cargo which is then rehandled by truckers and warehouses, disappeared from the cargo-handling process due to containerization.

An object of the Rules is to acquire unrelated, unthreatening work to replace longshore work that has disappeared entirely. The Board properly held that this object is secondary and unlawful. As *Longshoremen's Ass'n I* recognized, technological innovations might impact on the work opportunities of affected employees by transforming their work so the method of doing it is changed, by shifting their work to a different location, or by eliminating it entirely. 447 U.S. at 505, 510-11. Bargaining unit work will be displaced to the extent transformed or diverted work is performed by different workers after implementation of the new technology. Valid work preservation claims can be asserted to mitigate the threat or fact of displacement in most of these situations, even at the expense of separate employers and non-unit employees who are or will be the recipients of the transformed or diverted work. Yet claims asserted to work long performed by non-unit employees, which neither displaces traditional bargaining unit work nor is historically and functionally related to it, in order to replace work that has disappeared entirely due to technological change, constitute illegal work acquisition demands.

The fact that the motor carrier and specialty warehousing work claimed is unrelated to the work lost demonstrates conclusively that the ILA is "seeking to re-

strict by contract or boycott an employer with respect to the products he uses, for the purpose of acquiring for its members work that had not previously been theirs." *National Woodwork*, 386 U.S. at 648 (Harlan, J., concurring). Unlike some responses to technological change the ILA's attempt to gain new, replacement work for its members was not limited to the context of its immediate relationship with shipping employers. The Rules seriously disrupt the business practices of motor carriers and specialty warehousemen, and affect adversely the relationships of those outside parties with their employees. Third-party losses of this sort become intolerable when caused by a union's attempt, "not to preserve, but to aggrandize, its own position and that of its members" by acquiring new work. *Pipefitters*, 429 U.S. at 528-30 n.16.

The court of appeals denied enforcement because it thought the Board's order was not, and could not be, supported by a finding that the Rules "deprive the truckers and warehousemen of their off-pier work by transferring all or some of it to longshoremen at the pier" (Pet. App. 27a). Contrary to the Board's findings, the lower court envisioned a regime under the Rules in which container stuffing and stripping would be performed by longshoremen at the piers, while cargo would be handled by inland employees in breakbulk form during its overland journey. Traditional inland work would not actually be acquired under the court of appeals' view of the facts.

By interjecting the requirement that the object of acquiring new work actually succeed, the court below ignored the established principle that the *object* of an agreement calling for the disruption of a business relationship, not its *effect*, is determinative of the agreement's validity. "The test is one of purpose, not effect." *Local 1066, ILA (Wiggin Terminals, Inc.)*, 137 N.L.R.B. 45, 47 (1962), quoting *Alpert* v. *Local 1066, ILA (Terminal Operators, Inc.)*, 166 F. Supp. 22, 25 (D. Mass. 1958). With this understanding, it is apparent that the court

of appeals erred in failing to give proper deference to the Board's determination that an objective of the Rules is to acquire other employees' work. To avoid the onerous requirement of duplicative handling, and still comply with the Rules, off-pier cargo handling must either be transferred to the piers or moved outside the fifty-mile zone. Work opportunities for inland employees are diminished in either event. Both of these purposes comprehend the very work acquisition or job monopolization that this Court has condemned. *Pipefitters*, 429 U.S. at 528-30 n.16.

Even if one possible purpose of the Rules is to establish the sort of regime envisioned by the lower court, the record discloses that another purpose of the Rules is to prevent inland employers from assigning the work in dispute to their employees. The latter objective is plainly secondary, and it is not necessary that the *sole* object of the agreement or conduct complained against be within the statutory prohibition to make out a violation of § 8 (b) (4) (B) or § 8(e). *NLRB* v. *Denver Bldg. & Constr. Trades Council*, 341 U.S. 675, 689 (1951). Only one illegal object need appear. *NLRB* v. *Local 825, Operating Engineers*, 400 U.S. 297, 304-05 (1971).

Besides, even on the lower court's view of the facts, enforcement of the Board's order should not have been denied. Various commentators have suggested, and we agree, that a certain tolerance for agreements designed to obtain new work is warranted when they are largely confined to the immediate employer-employee relationship, and have only a slight disruptive impact on outside parties. But this is not such a case. The requirement for duplicative cargo handling significantly restricts the right of motor carriers and specialty warehousemen to do business in the normal way with customers and sea carriers. The LMRA's legislative history indicates that a work acquisition demand to redo work that is neither related to traditional unit work nor threatens such work does not

become lawful simply because an employer can permit non-unit employees to continue to perform the same work too.

ARGUMENT

I. THE RULES ON CONTAINERS EVIDENCE A SECONDARY OBJECTIVE, AND THUS VIOLATE SECTIONS 8(b)(4)(B) AND 8(e) OF THE LMRA, IN THEIR APPLICATION TO INLAND MOTOR CARRIER AND WAREHOUSE PRACTICES THAT ARE NOT FUNCTIONALLY RELATED TO THE TRADITIONAL WORK OF LONGSHOREMEN

A. Agreements Having As Their Object The Preservation Of Traditional Bargaining Unit Work, Or The Recapture Of Work That Is Historically And Functionally Related To Traditional Unit Work, Are Primary And Lawful To The Extent Their Application Is Confined To These Objectives

Section 8(b) (4) (B) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 158(b) (4) (B), prohibits labor organizations or their agents from inducing employees to refuse to handle particular goods or products, or coercing any person engaged in commerce, "where 'an object' of the inducement or coercion is to require any person to cease doing business with any other person." *NLRB* v. *Enterprise Ass'n of Pipefitters*, 429 U.S. 507, 510 (1977). The proviso to § 8(b) (4) (B) makes clear that its prohibitions reach only secondary, not primary, strikes and picketing. *Id.* In 1959, § 8(e) was added to the Act to prohibit hot cargo agreements. 29 U.S.C. § 158(e). A violation of the Act's hot cargo prohibition is made out by a showing that an agreement between an employer and a labor organization requires the cessation, either partial or total, of business relationships between the employer and any person and has a secondary objective. *Id.* at 517; *National Woodwork Mfrs. Ass'n* v. *NLRB*, 386 U.S. 612, 635 (1967).

"[A]greements made for 'primary' purposes, including the purpose of preserving for the contracting employees themselves work traditionally done by them," do not violate § 8(e). *Pipefitters*, 429 U.S. at 517, citing *National Woodwork*, 386 U.S. at 635. The determination whether an agreement calling for a cessation of business is primary or secondary "cannot be made without an inquiry into whether, under all the surrounding circumstances, the Union's objective was preservation of work for . . . [unit] employees, or whether the agreements and boycott were tactically calculated to satisfy union objectives elsewhere. . . ." *National Woodwork*, 386 U.S. at 644. An agreement or boycott whose purpose is " 'to reach out to monopolize jobs or acquire new job tasks' " (i.e., work the union never had) is secondary and unlawful. For the union's object would necessarily be to force a cessation of business, "not to preserve, but to aggrandize, its own position and that of its members. Such activity is squarely within the statute." *Pipefitters*, 429 U.S. at 528-30 n.16.

Frequently, union agreements and conduct fall between the extremes of work preservation and work acquisition. This occurs, for example, when the union attempts to recapture work actually performed by unit employees which was lost by them due to changes in the way their employer or its customers do business. E.g., *American Boiler Mfrs. Ass'n* v. *NLRB*, 404 F.2d 547 (8th Cir. 1968), *cert. denied*, 398 U.S. 960 (1970); *Meat and Highway Drivers, Local 710* v. *NLRB*, 335 F.2d 709 (D.C. Cir. 1964). The Board has recognized that "agreements or conduct aimed at recapturing or reclaiming for unit employees work which they previously performed or which otherwise constitutes 'fairly claimable work' are not proscribed by the Act." *Teamsters Local 282 (D. Fortunato, Inc.)*, 197 N.L.R.B. 673, 677 (1972); *Retail Store Employees Union, Local 876 (Canada Dry Corp.)*, 174 N.L.R.B. 424 (1969), *aff'd*, 421 F.2d 907 (6th Cir. 1970); *Retail Clerks' Union (Brentwood Markets, Inc.)*, 171 N.L.R.B. 1018 (1968).

No singular doctrine is apparent in Board or lower court decisions dealing with union efforts to recapture lost work. One commentator has roughly categorized the varying approaches according to a broad or narrow view of work reacquisition.[16] But even in decisions espousing the broad view, one unifying principle is discernible. That is, the work claimed must have displaced work formerly performed by unit employees in order to support a primary claim of work recapture or work reacquisition. Comment, *supra* note 16, at 821. *National Woodwork*, of course, teaches that "the remoteness of the threat of displacement by the banned product or services" is one of the "surrounding circumstances" to be considered when evaluating work preservation claims. 386 U.S. at 644 n.38.

This Court's decision in *Longshoremen's Ass'n I*, 447 U.S. 490, establishes the analytical framework for evaluating work preservation claims in the context of technological change. There, the Board was instructed:

> "to look at how the contracting parties sought to preserve that [traditional longshore] work, to the

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[16] Comment, *Work Recapture Agreements And Secondary Boycotts: ILA* v. *NLRB*, 90 Harv. L. Rev. 815, 821-22 (1977):

> "The broad view treats work reacquisition as preservation by focusing on the displacement of unit workers; thus, technology-generated work assignments which are functionally equivalent to work previously performed by the unit, *and which have displaced that work*, may be 'reacquired'. The narrow view suggests that reacquisition is more like acquisition by focusing on the difference in the description or manner of performance of the new work from the traditional work of the unit. Under the latter view, reacquisition is a legitimate union goal only if the jobs claimed have not yet evolved into the distinct employment of other workers, or if the new work is so similar to that performed by the original unit that it is literally the same except for its performance by outsiders." [Emphasis added.]

> extent possible, in the face of a massive technological change that largely eliminated the need for cargo handling at intermediate stages of the intermodal transportation of goods, and to evaluate the relationship between traditional longshore work and the work which the Rules attempt to assign to ILA members . . . ." [*Id.* at 509 (footnote omitted).]

The legal test is "whether the historical and functional relationship between this retained work and traditional longshore work can support the conclusion that the objective of the agreement was work preservation rather than the satisfaction of union goals elsewhere." *Id.* at 510 (footnote omitted).

Longshoremen's Ass'n I did not intimate that a valid union claim could be asserted to acquire new work historically performed outside the bargaining unit. Nor did this Court suggest, or even hint, that attempts to capture work that did not displace work formerly performed by unit employees could be considered primary activity under any formulation of the work preservation doctrine. Instead, it noted that "work preservation agreements typically come into being when employees' traditional work is displaced, or threatened with displacement, by technological innovation," and held: "The work preservation doctrine . . . must also apply to situations where unions attempt to accommodate change while preserving as much of their traditional work patterns as possible. . . ." *Id.* at 505, 506 (footnote omitted).

Plainly, the use of a boycott as a "sword" to monopolize jobs or acquire new job tasks when the jobs of unit employees are not threatened by the boycotted product, cannot be regarded as primary labor activity. Indeed, it is at least arguable that offensive boycotts, see, e.g., *Allen Bradley Co.* v. *Local 3, IBEW*, 325 U.S. 797 (1945), represented the very evil that brought § 8(b)(4) into being. *National Woodwork*, 386 U.S. at 630. And, in any event, this Court has not retreated from its view

that union conduct having as one of its objects the acquisition of new work by forcing a cessation of business is "squarely within the statute." *Pipefitters*, 429 U.S. 528-30 n.16.

B. The Objective Of Acquiring Work Which Was Always Performed By Employees Of Another Employer, And Which Never Threatened Jobs Inside The Unit, To Compensate Unit Employees For Job Losses Attributable To Other Causes Is Secondary And Unlawful

On remand, the Board carefully and comprehensively evaluated "the relationship between traditional longshore work and the work which the Rules attempt to assign to ILA members. . . ." *Longshoremen's Ass'n I*, 447 U.S. at 509. The inquiry thus undertaken was focused on the work of the longshoremen, not on the work of the employees of motor carriers, freight consolidators and warehousemen after the introduction of containerized shipping. *Id.* at 507. The latter work became pertinent only to identify the work claimed by the Rules so the evaluation mandated by this Court could be carried out.[17]

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[17] Below, the Shipping Group argued that the ALJ failed to heed this Court's admonition to focus his analyses dealing with trucking and warehousing on the work of longshoremen. Shipping Group's Principal Brief, *supra* note 12, at 46-47. This criticism is misplaced, for it amounts to nothing more than a complaint that the ALJ took into account "all the surrounding circumstances," including "the economic personality of the industry." *National Woodwork*, 386 U.S. at 645 n.38 and accompanying text. Surely the relationship of longshore work to the work claimed by the Rules cannot be evaluated without first identifying the latter work, and then inquiring into its connection with the longshoremen's traditional work. It is also essential to trace the historical origins of the work in dispute. Some of the work now performed by motor carrier employees, and claimed by the Rules, was found to be functionally related to longshore work, as was much of the warehouse work. Other motor carrier and warehouse work was found not to be functionally or historically related to traditional longshore work. Elaborate findings were made with respect to each category of disputed work; all were thoroughly analyzed (Pet. App. 105a-07a, 132a-45a).

Using the analytical framework provided in *Longshoremen's Ass'n I*, the Board held that the Rules' application to freight consolidators was legitimized by a valid work preservation objective. It found that containerization had diverted traditional longshore work from the piers to inland freight consolidators (Pet. App. 53a, 129a). For this reason, and because the cargo handling services performed by consolidators did not differ appreciably from those available at the piers, the Board concluded that it was functionally equivalent to the traditional longshore work of handling breakbulk cargo (Pet. App. 59a, 130a-31a). Although these rulings upheld the ILA's claims to most of the work in dispute—defined as "the initial loading and unloading of cargo within 50 miles of a port into and out of containers owned or leased by shipping lines having a collective-bargaining relationship with the ILA" (Pet. App. 57)—they did not end the inquiry.

The Board's analysis of the industry's economic personality in the context of the work in dispute, as performed before and after containerization, disclosed that container work integral to certain motor carrier and warehouse practices was not functionally related to traditional longshore work. It found that the stripping of import containers (both FSL and LCL)[18] shortstopped by motor carriers at trucking terminals was equivalent to work historically done by inland employees, not longshoremen, for reasons totally unrelated to the purposes accomplished by traditional breakbulk handling at the piers (see pp. 13-14, *supra*). The same finding was made in reference to the stuffing of export FSL contain-

[18] Neither the ALJ's analysis of shortstopping (Pet. App. 133a-35a), nor the order adopted by the Board in *Associated Transport* (Pet. App. 60a, 194a, 196a-97a), distinguished between the stripping of LCL and FSL containers for reasons of convenience entirely related to the surface transportation of freight. This work is not LCL container consolidation work fairly claimable by the Rules on Containers.

ers[19] at trucking terminals (see pp. 14-15, *supra*). Also, container handling that is integral to unique public warehousing practices was found unrelated to traditional longshore work on both functional and historical grounds (see pp. 15-17, *supra*).

In addition to finding that shortstopping and specialized warehousing services have "no relevance to the marine leg of the intermodal network" (Pet. App. 134a), the Board concluded that work performed by trucking and warehouse employees in connection with these surface transportation practices did not displace or threaten longshoremen's work (Pet. App. 135a). Their inland work was not created through any transformation or diversion of traditional longshore work wrought by the container innovation (Pet. App. 59a).[20] "Rather, after

[19] LCL container consolidation by motor carriers offering this service to the shipping public, or acting on behalf of an NVOCC or other consolidator, was held subject to the Rules' lawful reach (Pet. App. 55a n.35; 137a n.54). For historical reasons, the ALJ assumed that LCL export container work would fall into this category of claimable work. *Id.*

[20] Without rejecting this finding, the Board disclaimed reliance on it: "[W]e do not agree with . . . [the ALJ's] reliance on the fact that the work now done by the truckers and warehouses is work which was not created by containerization" (Pet. App. 59a). Its disclaimer is mystifying for three reasons: (1) *National Woodwork* identifies "the remoteness of the threat of displacement by the banned product or services" as the very first "surrounding circumstances" to be inquired into, 386 U.S. at 645 n.38. (2) By instructing the Board to "focus on the work of the bargaining unit employees, not on the work of other employees who may be doing the same or similar work," *Longshoremen's Ass'n I*, 447 U.S. at 507, the Court cautioned the Board against applying an "effects" test, *id.* at 507 n.22, corrected the fundamental error of "focusing on the work as performed after the innovation took place," *id.*, and clarified considerable confusion over how to define the disputed work. But there is no indication that this Court meant to delimit the scope of the Board's inquiry, thereby leading its reconsideration to a foreordained result, *id.* at 511, or to depart from the familiar *National Woodwork* standard, *id.* at 507. (3) The Board

containerization, some of the traditional loading and unloading work of the longshoremen, which had historically been duplicated by trucking and warehousing employees, essentially was eliminated" and "no longer exists as a step in the cargo-handling process." *Id.*

An object of the Rules is to capture container work integral to shortstopping and specialized warehousing in order to replace longshore work that had disappeared altogether from the cargo-handling process due to the development of container technology. The finding that traditional longshore work had not been diverted from the piers to motor carriers and warehousemen by containerization was an essential predicate for the Board's ultimate factual conclusion that the longshoremen's duplicative, pier-side work had disappeared. A line was drawn between traditional unit work that had been diverted to non-unit employees by the new technology and work that had not been diverted but had disappeared entirely. The former work could be lawfully claimed by the Rules, but the ILA's attempt to replace the latter work with new work historically and functionally unrelated to the old constituted illegal work acquisition.

The line drawn by the Board comports with this Court's remand and is faithful to *National Woodwork* and its progeny. *Longshoremen's Ass'n I* recognized that technological innovation might impact on the work opportunities of affected employees by transforming their work so the method of doing it is changed, by shifting their work to a different location, or by eliminating it entirely. 447 U.S. at 505, 510-11. Both transformed and diverted work are often performed by different workers after im-

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had to rely on the fact that containerization had not created the inland work claimed by the Rules in concluding that the longshoremen's traditional, duplicative work had disappeared. To belabor the obvious, that traditional longshore work would not have disappeared had it been transferred to inland employees by containerization.

plementation of new technology, resulting in the displacement of bargaining unit work. Valid work preservation claims can be asserted by unions, or set forth in collective bargaining agreements, to mitigate the threat or fact of displacement in these situations, even at the expense of separate employers and non-unit employees who are or will be the recipients of the transformed or diverted work.[21] Here, traditional longshore loading and unloading work was not transformed in any fundamental sense. And, to the extent their work was diverted to off-shore consolidators, the Board upheld the longshoremen's work preservation goals.

The problem becomes more acute when the technological innovation causes unit work to disappear entirely. For work within the primary unit is thereby displaced without corresponding employment gains elsewhere. Nonetheless, labor is not helpless in this situation. A price can be exacted from the primary employer to compensate employees for losses caused by its adoption of labor-saving technology. Comment, *supra* note 16, at 824. The collectively-bargained requirement for royalty payments on containers that move over the piers intact is an example of this approach (Pet. App. 234a-38a). Remaining work can be redistributed among unit employees by such devices as overtime restrictions, minimum staffing requirements and worktime guarantees. Presumably, it can also be agreed with the employer that when opportunities for new work, similar to work remaining in the unit, become available through normal business expansion (e.g., a new product line), all or part of that work will

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[21] *But see, Carrier Air Conditioning Co.* v. *NLRB*, 547 F.2d 1178 (2d Cir. 1976; *Associated General Contractors of California, Inc.* v. *NLRB*, 514 F.2d 433 (9th Cir. 1975). These cases involved illegal boycotts of new products whose manufacture required the inseparable application of unit and non-unit functions. Each held that the union respondents were actually attempting to obtain the non-unit functions always performed by the manufacturers' employees, thus evidencing a secondary work acquisition objective.

be performed by unit employees. *Canada Dry Corp.*, 421 F.2d 907; *Brentwood Markets*, 171 N.L.R.B. 1018; *Local 83, Dairy Workers (Arthur Elias)*, 146 N.L.R.B. 716 (1964).

These responses to technological change are concentrated in the primary work unit, in that they are "addressed to the labor relations of the contracting employer vis-a-vis his own employees." *National Woodwork*, 386 U.S. at 645. They do not disguise secondary objectives, or purport to claim work belonging traditionally and equitably to other employees. The same cannot be said of the ILA's attempts to claim the work of motor carrier and warehouse employees through application of the Rules to replace longshore work that has disappeared entirely. There is simply no nexus between the shortstopping and specialty warehousing work claimed by the Rules (Jt. App. 237-38, 239) and the work lost by longshoremen due to containerization. That the work claimed is unrelated to the work lost demonstrates conclusively that the ILA is "seeking to restrict by contract or boycott an employer with respect to the products he uses, for the purpose of acquiring for its members work that had not previously been theirs." *National Woodwork*, 386 U.S. at 648 (Harlan, J., concurring).

The notion that unrelated, unthreatening work long performed by non-unit employees can be acquired to replace unit work lost through technological change far exceeds any formulation of the work preservation doctrine by the Board or the courts. While union efforts to recapture traditional work lost to the unit are primary and lawful, those having the objective of acquiring work not previously performed by unit employees are secondary and unlawful.[22] No case thus far has held that work

[22] *Compare American Boilers Mfrs. Ass'n*, 404 F.2d at 551-52; *Meat and Highway Drivers, Local 710*, 335 F.2d at 714 *with Local 98, Sheet Metal Workers' Int'l Ass'n* v. *NLRB*, 433 F.2d 1189 (D.C. Cir. 1970); *NLRB* v. *Local 141, Sheet Metal Workers' Int'l Ass'n*, 425 F.2d 730, 731 (6th Cir. 1970); *Associated General Contractors of California*, 514 F.2d 433.

which has disappeared, in contrast to having been transformed or diverted, due to technological change can furnish a lawful basis for attempting to obtain the unrelated work of innocent employees of other employers. Since "the result [under § 8(e)] . . . depend[s] on how closely the [shipping] parties have tailored their agreement to the objective of preserving the essence of the traditional work patterns," *Longshoremen's Ass'n I*, 447 U.S. at 510 n.24, it is plain that the ILA's expansive claims under the Rules are beyond anything privileged by the work preservation doctrine.

Notably, the ILA's attempt to gain new, replacement work for its members was not strictly limited to the context of its immediate relationship with shipping employers. See generally, Note, *Secondary Boycotts and Work Preservation*, 77 Yale L.J. 1401, 1410 (1968). Both in design and implementation, the Rules seriously disrupt the business practices of motor carriers and specialty warehousemen, and affect adversely the relationships of these outside parties with their employees. Enforcement of the Rules will cause the diversion of cargo to truck terminals and warehouses beyond the fifty-mile limit (see pp. 17-18, *supra*), resulting in revenue losses by affected truckers and warehousemen and job losses by their employees. Under the balance effected by the statutory scheme, third-party losses of this sort are tolerable when they are but unintended consequences of work preservation agreements. Yet they become intolerable when caused by a union's attempt, "not to preserve, but to aggrandize, its own position and that of its members" by acquiring new work. *Pipefitters*, 429 U.S. at 528-30 n.16.

II. THE COURT OF APPEALS ERRED IN UPHOLDING THE RULES' APPLICATION TO MOTOR CARRIERS AND SPECIALTY WAREHOUSEMEN BY RELYING ON A SUPPOSED FAILURE OF PROOF THAT THEIR AVOWED OBJECTIVE OF ACQUIRING NEW WORK THROUGH SECONDARY PRESSURE HAD ACTUALLY SUCCEEDED

A. The Test For Secondary Activity Is One Of Purpose, Not Effect

The lower court did not dispute the Board's finding that certain motor carrier and warehouse cargo handling reached by the Rules was unrelated to the traditional work of longshoremen. Nor did it question the Board's conclusion that the duplicative, pier-side cargo handling performed by longshoremen prior to containerization had disappeared (Pet. App. 27a). In upholding the Rules' application to shortstopping and specialty warehousing despite their avowed secondary objectives, the court of appeals reasoned:

> "From these unassailable facts, the Board concluded that the ILA's attempt to preserve under the Rules loading and unloading of cargo constitutes 'unlawful work acquisition.' But the Board conspicuously failed to ground this conclusion of law in the only finding of fact that might support it: that the Rules, in preserving for ILA members the right to do this initial loading and unloading, somehow deprive the truckers and warehousemen of *their* off-pier work by transferring all or some of it to longshoremen at the pier. Put another way, the Board hung the 'work acquisition' tag on the Rules in these two instances without a finding that the longshoremen acquired anything. . . ." [Pet. App. 27a-28a.]

Thus, the court below erroneously introduced an entirely new element into traditional primary-secondary analysis, that is, a requirement that the object of acquiring new work through secondary pressure actually succeed.

This novel requirement is completely at odds with the established principle that the *object* of an agreement calling for the disruption of a business relationship, not its *effect*, is determinative of the agreement's validity. "The test is one of purpose, not effect." *Local 1066, ILA (Wiggin Terminals, Inc.)*, 137 N.L.R.B. 45, 47 (1962), quoting *Alpert* v. *Local 1066, ILA (Terminal Operators, Inc.)*, 166 F. Supp. 22, 25 (D. Mass. 1958). Just as the benefit to bargaining unit employees of acquiring new work cannot validate a secondary agreement, *Pipefitters*, 429 U.S. at 528-30 n.16, the effect of a work preservation agreement on employment opportunities outside the bargaining unit is irrelevant to the agreement's validity "so long as the union had no forbidden secondary purpose to affect the employment relations of the neutral employer." *Longshoremen's Ass'n I*, 447 U.S. at 507 n.22 (citation omitted).

The test being one of motivation or purpose, it is apparent that the court of appeals erred in failing to give proper deference to the Board's determination,[23] reached in accordance with the analytical process mandated by this Court, that an objective of the Rules is to acquire work traditionally done by other employees. Obviously, an illegal motive can, and often must, be demonstrated by evidence other than the successful attainment of the forbidden goal.[24] Thus, once an illegal work acqui-

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[23] "The statutory standard under which the Court of Appeals was obliged to review this case was not whether the Court of Appeals would have arrived at the same result as the Board did, but whether the Board's findings were 'supported by substantial evidence on the record considered as a whole.'" *Pipefitters*, 429 U.S. at 531 (citations omitted).

[24] The court of appeals' insistence on proof of actual work acquisition—i.e., transfer of inland employees' traditional work to the piers—is totally inconsistent with the statutory scheme. LMRA § 10(1) requires the Board's regional offices, upon determining that reasonable cause exists to believe that a charge alleging violations of § 8(b)(4)(B) or § 8(e) is true and that complaint should

sition motive is shown and manifests itself in a cessation of business, as where the boycotting union prevents use of the disfavored product or service, it becomes immaterial whether or not unit employees actually gain work at the expense of non-union employees. See, e.g., *Carrier Air Conditioning*, 547 F.2d at 1181-84, 1187; *Associated General Contractors of California*, 514 F.2d at 436, 438.

B. The Lower Court Erred By Overlooking Substantial Evidence of Secondary Purpose

The court below envisioned a regime under the Rules in which container stripping and stuffing would be performed at the piers by longshoremen, while import and export cargo would be handled in breakbulk form by truckers and warehousemen during its overland journey. Since breakbulk handling is exactly what trucking and warehouse employees did prior to containerization, the court of appeals thought that traditional inland work patterns would remain unaffected by enforcement of the Rules (Pet. App. 28a). There are a number of problems with this approach, not the least of which is that it substitutes the court of appeals' own views of the facts for those of the Board. *Pipefitters*, 429 U.S. at 532.

Even assuming, *arguendo*, that one possible purpose of the Rules is to establish the sort of regime envisioned by the lower court, other purposes are disclosed more clearly in this case. As the Court observed in *Longshoremen's Ass'n I*, "the use of containers is substantially more

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issue, to apply for preliminary injunctive relief against the allegedly illegal conduct pending decision by the Board. 29 U.S.C. § 160(1). This procedure is designed to prevent injury caused by secondary conduct, such as the actual transfer of disputed job tasks in work acquisition cases. Outstanding orders restrained enforcement of the Rules on Containers from 1975 until after the record on remand was completed. See, e.g., *Pascarell* v. *New York Shipping Ass'n*, No. 81-13, D. N.J., Feb. 24, 1981, *aff'd*, 650 F.2d 19 (3d Cir.), *cert. denied*, 454 U.S. 832 (1981). Consequently, it is not surprising that the record does not contain evidence that inland employees' work was actually transferred to the piers.

economical than traditional [breakbulk] methods of handling ocean-borne cargo." 447 U.S. at 494 (footnote omitted). It is unrealistic to assume that shippers, consignees and implicated industries will easily surrender the economies of containerization (Jt. App. 73-74), at least not while other alternatives exist. Almost certainly, practices will be developed to avoid duplicative on-pier and off-pier cargo handling. To comply with the Rules—particularly if the Shipping Group chooses to extend the geographic zone further inland (Rule 7(a), Pet. App. 282a)—off-pier cargo handling traditionally performed by certain inland employees must be transferred to the piers when these practices are developed.[25]

Record evidence introduced on remand demonstrates that enforcement of the Rules against shortstopping and specialized warehousing will drive this traditional inland work outside the fifty-mile zone (Pet. App. 294a, 297a, 300a). Warehouses will lose business to other warehousing operations located beyond the geographic zone (Pet. App. 295a, 301a-02a). Without the option to shortstop, motor carriers will find it uneconomical to transport containerized cargo through port areas, and will stop engaging in this business entirely or partially (Pet. App. 229a; Jt. App. 131). Necessarily, the resulting customer and revenue losses (Jt. App. 93) will lead to work force reductions among inland employees (Pet. App. 299a). Even the transportation of large containers intact through the fifty-mile zone to avoid pier-side handling (Rule 2,

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[25] This development is anticipated by the ILA's claim "that the loading and unloading of land transportation which takes place away from the pier could be done by them on the pier with equal efficiency." *Longshoremen's Ass'n I*, 447 U.S. at 526 (Burger, C.J., dissenting). See also Brief For Respondent ILA, at 12 n., in *Longshoremen's Ass'n I*, 447 U.S. 490 ("If, for reasons of safety, convenience or economy, the truckers did not wish a FSL container to proceed to its destination intact, it is undisputed that the redistribution of containerized cargo could as readily have taken place at the piers as at the trucking stations. . .").

Pet. App. 225a) will result in work losses for dock and platform workers engaged in cargo handling.

Literally, in their application to shortstopping and specialty warehousing, the Rules' purposes include the transfer of traditional inland work to the piers for performance by deepsea ILA labor and/or the elimination of non-ILA cargo handling within the fifty-mile zone. The first purpose assumes that longshoremen will acquire traditional inland work at the expense of trucking and warehousing employees, while the second envisions that, even in the absence of corresponding longshore work gains, cargo-handling work performed by non-unit employees within the geographic zone will be eliminated. Work opportunities for the employees of motor carriers and warehousemen now performing the disputed work are diminished in either event. Both of these purposes plainly comprehend the very work acquisition or job monopolization that this Court has condemned as secondary and lawful. *Pipefitters*, 429 U.S. at 528-30 n.16.

These additional purposes shown by substantial evidence on the record support the Board's conclusion that, in their application to traditional inland work, the Rules violate the Act's secondary proscriptions. For they are tactically calculated to satisfy the ILA's goal of preventing inland employers from assigning cargo-handling work to their employees. *Longshoremen's Ass'n I*, 447 at 510. Unquestionably, it is not necessary that the "*sole* object" of the agreement or conduct complained against be within the statutory prohibition to make out a violation of § 8(b)(4)(B) or § 8(e). *NLRB* v. *Denver Bldg. & Constr. Trades Council*, 341 U.S. 675, 689 (1951). Only one illegal object need appear. *NLRB* v. *Local 825, Operating Engineers*, 400 U.S. 297, 304-05 (1971); *NLRB* v. *Carpenters District Council of New Orleans*, 407 F.2d 804, 806 (5th Cir. 1969).

Multiple errors were committed below. First, contrary to established principles, the court of appeals insisted on

proof that the ILA's secondary work acquisition objective actually succeeded, failing to recognize that the test is one of purpose, not effect. Second, the lower court substituted its own view of the facts for those of the Board by postulating a scenario in which it thought inland work patterns would not be disrupted. Third, it overlooked substantial evidence that the Rules indeed had secondary work acquisition objectives so far as they were directed at the traditional work practices of motor carriers and warehouses, any one of which furnishes adequate ground to support the violations found by the Board. Errors of such dimension require reversal.

C. The ILA's Application Of The Rules Is Unlawful Even Upon The Lower Court's View Of The Facts

Besides, even under the lower court's view of the facts, enforcement of the Board's order should not have been denied. To see why this is so, it is necessary to accept, *arguendo*, the notion that the ILA's motive was not to acquire any work of inland employees; that, theoretically, new work was sought for its members in response to generalized dislocations caused by containerization. Various commentators have suggested,[26] and we believe, that a certain tolerance for work acquisition is warranted to enable the process of collective bargaining to deal effectively with the often serious impact of technological change on employee job security. *Cf.*, *National Woodwork*, 386 U.S. at 640. "A union attempt to gain new work strictly limited to the immediate employer-employee context threatens none of the injury to outside parties

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[26] See Cassman, *Deconsolidating The Work Preservation Doctrine: Dolphin-Associated Transport*, 4 Indus. Rel. L.J. 604 (1981); Ebel, *Subcontracting Clauses and Section 8(e) of the National Labor Relations Act*, 62 Mich. L. Rev. 1176, 1188-89 (1964); Lesnick, *Job Security and Secondary Boycotts: The Reach of NLRB §§ 8(b)(4) and 8(e)*, 113 U. Pa. L. Rev. 1000, 1019-28 (1965); Note, 77 Yale L. J. at 1410-12; Comment, 90 Harv. L. Rev. at 821-28.

that the secondary prohibition supposedly guards against," and ought not to be branded inherently secondary and unlawful. Note, 77 Yale L.J. at 1410. Labor-management negotiation over job assignments should not be precluded "if the bargaining unit moves into new areas of production, or if technological change produces new jobs within the union's jurisdiction. . . ." *Local 98, Sheet Metal Workers*, 433 F.2d at 1201 (Wright, J., dissenting).

For these reasons, the suggestion that any attempt to acquire new work in an effort to mitigate the effects of innovative technology is per se unlawful carries disturbing implications for the future. There is positive danger in excluding collective bargaining as one avenue for discovering solutions to the elusive labor problems caused by technological advances. *National Woodwork*, 386 U.S. at 650 (Harlan, J., concurring). Nor is this the only reason for caution. Little imagination is needed to envision future situations in which a union agreement or activity designed to obtain new work is so largely confined to the immediate employer-employee relationship, and the disruptive impact on third parties so slight, as to be outside the Act's secondary prohibitions. *Cf., Operating Engineers*, 400 U.S. at 305. These situations should not be anticipated.

Our reservations do not extend to the instant case, even as the court of appeals saw it. To the extent they are applied to acquire new work, as here, the Rules on Containers are not confined to the ILA's relationship with sea carriers and marine terminal operators. Nor can their disruptive impact on outside parties be reasonably described as "slight." Quite apart from the fact that the onerous requirement for duplicative cargo handling will cause inland employees to lose their traditional work, *supra p.* 39, this requirement significantly restricts the right of motor carriers and specialty warehousemen to do business in the normal way with shippers, consignees and

sea carriers. As such, it is an "injurious alternative" to a complete cessation of business, having a severe disruptive impact well within the intendment of the statute's prohibitions. *Cf., General Longshore Workers, ILA Local 1418 (E. Harris Mercer)*, 235 N.L.R.B. 161, 168-69 (1978); *Teamsters Local 85 (Southern Pac. Transp. Co.)*, 199 N.L.R.B. 212, 215 (1972).

A work acquisition demand or agreement to redo work that is neither related to traditional unit work nor threatens such work is not saved from illegality under §§ 8(b)(4)(B) or 8(e) simply because an employer, at its option, can suffer the economic penalty of having non-unit employees do the same work too. This situation, among others, was featured in *Allen Bradley Co.*, 325 U.S. 797, and enabled Senator Ellender to give the following example of a "secondary boycott" during the legislative debate over the need for secondary prohibitions:

> Another example is the New York Electrical Workers Union, the IBEW . . . . [N]o employer who manufactures electrical equipment outside of New York has a ghost of a show of having his equipment placed in the large buildings in New York City. *When such equipment is sent to New York City, the IBEW local refuses to install it unless it is permitted to tear all the equipment apart and assemble it again.* Of course, one can readily understand that such procedure is unconscionable and that it results in high costs to those engaged in the erection of office buildings, homes, and stores; in fact, all sorts of buildings requiring electrical equipment. [93 Cong. Rec. S 4255 (daily ed., April 28, 1947), *reprinted in* 2 NLRB, *Legislative History of the Labor Management Relations Act, 1947*, at 1056 (emphasis added).]

Although *Allen Bradley's* precise influence on the legislative intent underlying § 8(b)(4) is open to argument, *National Woodwork*, 386 U.S. at 629-30, the foregoing reference is sufficiently explicit to indicate that Congress

did not intend to approve job acquisition attempts of the sort envisioned by the court of appeals (Pet. App. 28a). We submit, therefore, that even on the lower court's view of the facts and the inferences it drew, the ILA's enforcement of the Rules on Containers violated §§ 8(b)(4)(B) and 8(e).

CONCLUSION

The object of the Rules and their enforcement in the circumstances of this enforcement proceeding is to monopolize all cargo loading and unloading in the fifty-mile zone to assure its performance by deepsea ILA labor. Failing attainment of that object, the Rules alternatively seek to assure that no one else engages in cargo-handling work within the geographic zone regardless of existing work patterns. As applied to shortstopping and specialty warehousing, the Rules' objectives are blatantly secondary. For these and other reasons set forth above, the decision of the court of appeals should be reversed and the cause remanded with instructions to enforce the Board's order.

Respectfully submitted,

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DATED: March 1, 1985